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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTHERN OHIO  
EASTERN DISTRICT

5 :06cv0180  
**JUDGE ECONOMUS**

TALERIS CREDIT UNION, INC.. )

Plaintiff, )

v. )

TOWPATH CREDIT UNION, )

Defendant. )

Civil Action No.: )

Judge: )

COMPLAINT -  
UNFAIR COMPETITION)

DEMAND FOR JURY TRIAL)

1. Plaintiff, Taleris Credit Union, Inc., formerly known as The Telephone Credit Union, Inc., is a corporation organized and existing under the laws of the state of Ohio and has its principal place of business at 1250 East Granger Road, Cleveland, Ohio 44131.

2. Upon information and belief, defendant, Towpath Credit Union ("Towpath") is a corporation organized and existing under the laws of the state of Ohio and has its principal place of business at 2969 Smith Road, Fairlawn, Ohio 44333.

3. This is an action for a violation of Section 43(a) of the Lanham Act, 15 USC § 1125(a), trademark infringement and unfair competition under Ohio common law, and for violation of the Ohio Deceptive Trade Practices Act.

4. Subject matter jurisdiction exists pursuant to 15 USC § 1121, and 28 USC §§ 1331 and 1338(a) and (b).

5. Venue is proper in the Northern District of Ohio pursuant to 28 USC §§1391(b), (c) and (d).

COUNT I  
UNFAIR COMPETITION

6. The allegations of paragraphs 1 - 5 are repeated as if fully rewritten.

7. Taleris Credit Union, Inc. is a credit union engaged in the business of offering credit union services to its members in northeastern Ohio area. Taleris Credit Union, Inc. was incorporated in the state of Ohio in 2005 and was formerly known as The Telephone Credit Union, Inc. The Telephone Credit Union, Inc. became Taleris Credit Union, Inc. by change of name in or about June 2005. Since at least as early as the 1960's, The Telephone Credit Union, Inc. engaged in the business of offering credit union services to its members in northeastern Ohio area. Taleris Credit Union, Inc. and its predecessor-in-interest, The Telephone Credit Union, Inc., shall collectively be referred to herein as "Taleris".

8. Since at least as early as 1976, Taleris has been continuously and exclusively using the mark TCU as a service mark in connection with offering credit union services in the northeastern Ohio area. Taleris has advertised and promoted its services using the TCU mark for many years and has expended considerable sums of money in order to have its members and the public at large associate the TCU mark with Taleris.

9. True and correct copies of documents evidencing Taleris' continuous use of TCU as a service mark since 1976 are attached as Exhibit A.

10. As a result of Taleris' longstanding use of TCU as a service mark, Taleris has developed common law trademark rights in the TCU mark, including valuable goodwill and business reputation associated with the TCU mark.

11. Upon information and belief, Towpath provides credit union services to its members in the northeastern Ohio area.

12. In or about 2005, Towpath commenced using the designation TCU in connection with its offering of credit union services.

13. True and correct copies of Towpath documents and photographs of Towpath's sign in front of its building on Smith Road in Fairlawn, Ohio are attached hereto as Exhibit B. The documents and photographs of Exhibit B evidence Towpath's use of the TCU designation.

14. Given that both Taleris and Towpath are credit unions serving members in the northeastern Ohio area, use of the TCU designation by Towpath constitutes unfair competition in violation of Section 43(a) of the Lanham Act, 15 USC § 1125(a), in that Towpath's use of the TCU designation is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Towpath with Taleris, or as to the origin, sponsorship, or approval of Towpath's services with or by Taleris. Towpath's acts complained of herein constitute a false designation or description of origin in violation of Section 43(a) of the Lanham Act, 15 USC § 1125(a).

15. Towpath's use of the designation TCU has caused and, if permitted, will continue to cause substantial irreparable damage to Taleris' rights in its TCU service mark, including damaging Taleris' valuable goodwill and business reputation associated with the TCU mark.

16. Upon information and belief, Towpath, being in the credit union business and having a principal place of business within 15 miles of the principal place of business of Taleris, was aware of Taleris' trademark rights in the TCU service mark prior to adopting the TCU designation.

17. Upon information and belief, said acts of unfair competition by Towpath are willful and render Towpath liable with respect to all remedies provided in 15 USC §§ 1116, 1117 and 1118, including injunctive relief, profits, damages, attorney's fees and costs and destruction of infringing articles.

COUNT II  
COMMON LAW TRADEMARK INFRINGEMENT

18. The allegations of paragraphs 1 – 17 are repeated as if fully rewritten.

19. Towpath's use of the designation TCU in connection with its offering of credit union services is likely to cause confusion or mistake or deceive purchasers as to the source or origin of Towpath's products or services, or as to affiliation, association or sponsorship of Towpath's services with or by Taleris.

20. Towpath's acts complained of herein constitute trademark infringement under the common law of the State of Ohio.

COUNT III  
COMMON LAW UNFAIR COMPETITION

21. The allegations of paragraphs 1 - 20 are repeated as if fully rewritten.

22. Towpath's acts complained of herein constitute unfair competition under the common law of the State of Ohio.

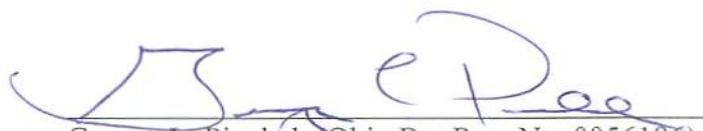
COUNT IV  
VIOLATION OF OHIO DECEPTIVE TRADE PRACTICES ACT

23. The allegations of paragraphs 1 - 22 are repeated as if fully rewritten.
24. Towpath's use of the TCU designation, as described above, caused and will continue to cause likelihood of confusion or misunderstanding, as is a deceptive representation that Towpath's services has a source, sponsorship, approval, status, affiliation, or connection that they do not have.
25. Towpath's acts complained of herein constitute a violation of the Ohio Deceptive Trade Practices Act, Ohio Revised Code § 4165.02 *et seq.*

WHEREFORE, plaintiff Taleris Credit Union, Inc. prays for the following relief:

- A. A judgment that Towpath has engaged in unfair competition in violation of Section 43(a) of the Lanham Act, has infringed the trademark rights of Taleris in its TCU service mark in violation of Ohio common law, has engaged in unfair competition in violation of Ohio common law, and has violated the Ohio Deceptive Trade Practices Act, ORC § 4165.02;
- B. A permanent injunction prohibiting Towpath, its agents, employees, representatives, subsidiaries and all others acting in concert with Towpath from:
  - (1) engaging in conduct constituting unfair competition or trademark infringement of Taleris' rights in its service mark TCU, including but not limited to, using the designation TCU or any designation confusingly similar to TCU in connection with Towpath's offering of credit union services; and
  - (2) engaging in conduct likely to cause the public to believe that Towpath's products or services are in any way associated with Taleris;

- C. An award of damages as provided by 15 USC § 1117(a) including: (1) Towpath's profits, and (2) any damages sustained by Taleris, and (3) the costs of this action;
- D. A trebling of the award of damages of paragraph C above, pursuant to 15 USC § 1117(a).
- E. An order, as provided by 15 USC § 1118, directing Towpath to deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Towpath bearing the TCU designation;
- F. A finding, pursuant to 15 USC § 1117(a), that this action constitutes an exceptional case and an award of attorney's fees and costs in favor of Taleris; and
- G. Such other relief that the Court may deem just and proper.

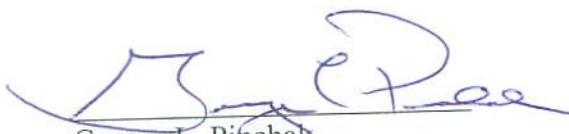


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DEMAND FOR JURY TRIAL

Plaintiff, Taleris Credit Union, Inc., hereby demands a jury trial.



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